

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B02

PLR-105926-11

Date:

August 12, 2011

## LEGEND

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

New Parent =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Company Official =

Outside Tax Practitioner =

Dear :

This letter ruling responds to a letter from your authorized representatives, dated February 8, 2011, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested for Parent and its subsidiaries to make an election to file a consolidated Federal income tax return, with Parent as the common parent, under § 1.1502-75(a)(1) of the Income Tax Regulations (hereinafter referred to as "the Election"), effective for the taxable year ending on Date 4. The material information provided in that request and in later correspondence is summarized below.

Parent, prior to its acquisition on Date 4, was the common parent of an affiliated group of corporations (the "Parent Group"). Throughout the pre-Acquisition period beginning on Date 1 and ending on Date 4, Parent owned all of the stock of Sub 1 which, in turn, owned all of the stock of Sub 2. Parent owned all of the stock of Sub 3 for a portion of the pre-Acquisition period; on Date 2, in connection with the Acquisition, Parent formed Sub 3, and on Date 3, Sub 3 ceased to be affiliated with Parent. On Date 4, pursuant to a Stock Purchase Agreement and an amendment thereto, New Parent acquired all of the issued and outstanding common stock of Parent. As a result of the Acquisition, the Parent Group terminated, and a new affiliated group was formed with New Parent as the common parent.

Parent and each of Sub 1, Sub 2, and Sub 3 (collectively, "the Subs") intended to elect to file a consolidated Federal income tax return, with Parent as the common parent, for the taxable year that began on Date 1 and ended on Date 4. The Election was due on the due date for the common parent's return, but for various reasons a valid Election was not filed. After the due date for the Election, it was discovered that the Election had not been filed. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the Election. The period of limitations on assessment under § 6501(a) has not expired for the Parent Group's taxable year for which they want to make the election, the taxable year in which the Election should have been filed, or any taxable years that would be affected by the Election had it been timely filed. Parent has represented that it is not seeking to alter a return position for which an accuracy related penalty has been or could be imposed under § 6662 with respect to the returns of

Parent, Sub 1, Sub 2, and Sub 3 at the time the taxpayer requested relief (taking into account any qualified amended return filed within the meaning of § 1.6664-2(c)(3)).

Section 1.1502-75(a)(1) of the Income Tax Regulations provides, in part, that an affiliated group of corporations which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member of the group during any part of the taxable year for which the consolidated return is to be filed consents, in accordance with § 1.1502-75(b), to the regulations under § 1502. If a group wishes to exercise its privilege of filing a consolidated return, such consolidated return must be filed not later than the last day prescribed by law (including extensions of time) for the filing of the common parent's return.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (i.e., § 1.1502-75(a)(1)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the Election, provided Parent shows it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Parent, Company Official, and Outside Tax Practitioner explain the circumstances that resulted in the failure to timely file the Election. The information establishes that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service. See § 301.9100-3(b)(1)(i).

Based on the facts and information submitted, including the representations made, we conclude that Parent has shown it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, provided that the Parent Group qualifies substantively to file a consolidated return for the applicable tax year, an extension of time is granted under § 301.9100-3, until 45 days from the date on this letter, for Parent

to file the Election (by filing a consolidated return, with Parent as the common parent, and attaching a Form 1122 for each of Sub 1, Sub 2, and Sub 3) for their taxable year ending on Date 4. The Parent Group must attach a copy of this ruling letter to such return, or if the Parent Group files the return electronically, a statement must be attached to the return that provides the date and the control number of this ruling letter.

The above extension of time is conditioned on the Parent Group's tax liability (if any) being not lower, in the aggregate, for all years to which the Election applies, than it would have been if the Election had been timely made (taking into account the time value of money). No opinion is expressed as to the Parent Group's tax liability for the year involved. A determination thereof will be made by the applicable Director's office upon audit of the Federal income tax returns involved.

We express no opinion with respect to whether, in fact, the Parent Group qualifies substantively to file a consolidated return. In addition, we express no opinion as to the tax effects or consequences of filing the return or the Election late under the provisions of any other section of the Code or regulations, or as to the tax treatment of any conditions existing at the time of, or effects resulting from, filing the return or the Election late that are not specifically set forth in the above ruling. For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made by Parent, Company Official, and Outside Tax Practitioner. However, the Director should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the Election, penalties and interest that would otherwise be applicable, if any, continue to apply.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

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Ken Cohen  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel (Corporate)

cc: